

## **§ 2.13**

the request is addressed is responsible for responding to the request and for making a reasonable effort to search for responsive records.

(b) In determining which records are responsive to a request, the bureau will include only records in its possession and control on the date that it begins its search.

(c) The bureau will make reasonable efforts to search for the requested records. As part of its reasonable efforts, the bureau will search paper and/or electronic records (for example, emails), as appropriate. The bureau will not search for records in an electronic form or format if these efforts would significantly interfere with the operation of the bureau's automated information system.

(d) If a bureau receives a request for records in its possession that primarily concern another bureau or Federal Government agency that is subject to FOIA, it may undertake consultations and/or referrals as described in § 2.13.

[77 FR 76902, Dec. 31, 2012, as amended at 81 FR 11128, Mar. 3, 2016; 84 FR 61826, Nov. 14, 2019]

### **§ 2.13 How do consultations and referrals work?**

(a) When a bureau (other than the Office of Inspector General) locates responsive records that primarily concern another bureau or Federal Government agency that is subject to FOIA, the bureau will determine whether that bureau or agency would be better able to determine whether the record is exempt from disclosure.

(b) If the bureau processing the request believes that another bureau or agency would be better able to determine whether the record is exempt from disclosure, the bureau will contact that bureau or agency to determine whether it should refer the record to that bureau or agency or consult with that bureau or agency.

(1) If the bureau processing the request refers a record to another bureau or agency, that other bureau or agency will respond to you directly about that record. If the bureau processing the request consults with another bureau or agency, the bureau processing the request will respond to you directly.

## **43 CFR Subtitle A (10–1–20 Edition)**

(2) If the bureau receives a request for records that another agency has classified under any applicable executive order concerning record classification, or that the bureau believes may be appropriate for classification by another agency, it will refer the request for those records to that agency for response.

(3) Whenever a bureau refers any part of the responsibility for responding to a request to another bureau or agency, it will:

(i) Document the referral;

(ii) Maintain a copy of the referred record; and

(iii) Notify you in writing of the referral, including whether all or part of your request has been referred, the name of the bureau or agency to which the record was referred, and that bureau or agency's FOIA contact information.

(4) If disclosure of the identity of the agency to which the referral would be made could harm an interest protected by an applicable exemption, such as the exemption that protects ongoing law enforcement investigations, a referral would be inappropriate and the bureau will coordinate with the agency instead.

(c) When a bureau receives a referral, the bureau will assign the referral to the appropriate processing track as described in § 2.15 of this part and process it according to the date that the consulting or referring bureau or agency received your request as described in § 2.14 of this part.

(d) Bureaus may establish written agreements with other bureaus or agencies to eliminate the need for consultations or referrals for particular types of records.

[84 FR 61826, Nov. 14, 2019]

## **Subpart D—Timing of Responses to Requests**

SOURCE: 77 FR 76902, Dec. 31, 2012, unless otherwise noted.

### **§ 2.14 In what order are responses usually made?**

The bureau ordinarily will respond to requests according to their order of receipt within their processing track.